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JOSE ADAN TREVIÑO
MEMBER

May 2, 1997

Ms. Nancy M. Stiles
Silver, Freedman & Taff, L.L.P.
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934

Re: Imperial Thrift and Loan Association

Dear Ms. Stiles:

This is in response to your letter dated October 22, 1996, and received by this office on October 28, 1996.

Your letter indicates that Imperial Thrift and Loan ("Imperial"), a California-chartered industrial loan company, is organized and operates under the California Industrial Loan Law. You indicated that Imperial is subject to supervision and regulation by the California Commissioner of Corporations, is a member of the Federal Deposit Insurance Corporation ("FDIC"), and, therefore, is also subject to supervision and regulation by the FDIC.

Your letter and supplemental materials indicate that Imperial is engaged primarily in commercial lending, and that its loans are primarily secured by income-producing property and by real estate. Imperial proposes to offer and sell certificates of deposit and other depository instruments. The certificates of deposit are term certificates, with a term ranging from three months to five years, and are debts of Imperial to the depositor. The other depository instruments, including passbook or statement savings accounts (including money market accounts with limited check writing features), are also debts of Imperial to the depositor but do not have a fixed term and/or fixed rate of interest.

You have indicated that Imperial represents that except where the exemption under Section 5.H of the Texas Securities Act (the "Act") is applicable, in order to assure that the exemption under Section 5.M of the Act is available, prior to making sales of any certificate of deposit or other depository instrument (collectively referred to as "depository instruments"), Imperial representatives offering depository instruments to persons in Texas will: (i) check Imperial's list of depositors to determine whether the person, in any capacity, has any additional accounts or depository instruments with Imperial; (ii) determine whether the aggregate balances of those existing accounts and depository instruments, aggregated with the sale of the new depository instrument to the person, would exceed applicable FDIC insurance limits with respect to such person; and (iii) limit sales of

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depository instruments to situations where the \$100,000 FDIC insurance limit is not exceeded with respect to that person.

Based upon the foregoing understanding, it does not appear that the exemption provided by Section 5.L of the Act is available since Imperial is not a "bank" organized and subject to regulation under the laws of the United States or under the laws of any state or territory of the United States as required. However, this will confirm that, so long as sales to be made in Texas are restricted to persons who will not own, in any capacity, in excess of the \$100,000 insurance limit, the exemption provided by Section 5.M of the Act would be available for sales of the depository instruments in this State.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely upon the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the opinion stated above would be void.

Further, this Agency does not grant nor confer the exemption. Its availability depends entirely upon full compliance with the language of the exemption. If a dispute arises as to the availability of the exemption, the burden of proof falls upon the party claiming the exemption.

Finally, opinions expressed by this Agency are not binding upon civil litigants in future proceedings.

I trust this information answers your inquiry. Please feel free to write us if you need further information.

Sincerely,

DENISE VOIGT CRAWFORD
Securities Commissioner

David Weaver
General Counsel

DW/mew